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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,267	07/18/2003	Darrell James Monnic	115171-003	3505
24573 7590 06/01/2007 BELL, BOYD & LLOYD, LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER LE, HUYEN D	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/623,267

Applicant(s)

MONNIE ET AL.

Examiner

HUYEN D. LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 16-25, 28, 30, 33 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-15, 26, 27, 29, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 26, 27, 29, 31, 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaefer (U.S. patent 3,182,746).

Regarding claims 1-3, 26-27 and 31-32 Schaefer teaches a method and apparatus of a device that comprises a vocal sound receiver (6, 12, 14), and a sound director (10) having at least one hollow portion positioned between the first end and second end (figures 1, 2). As broadly claimed, Schaefer teaches a sound regulator (24, 26, 32, 34, 36, 38, figure 4) that is operatively coupled to the vocal sound receiver (figures 1, 2).

Schaefer further teaches an ear sound deliverer (8) that is coupled to the second end of the sound director and includes a head engagement member as claimed.

Regarding claims 29 and 34, it is inherent that the Schaefer device can be worn and adapted for delivering the vocal sound to a right ear or a left ear of a user.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 4 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaefer (U.S. patent 3,182,746) in view of May (U.S. patent 2,998,497) or Golliher (U.S. patent 5,407,113).

Regarding claim 4, Schaefer does not specifically teach a head securing member removably attached to the sound deliverer as claimed. However, providing a head support for the earpiece is known in the art.

May or Golliher teaches a head support for a hand set (see figures 1-2 in May and figures 1, 4, 5 in Golliher).

Therefore, it would have been obvious to one skilled in the art to provide a head support or a head securing member, as taught by May or Golliher, for the device of Schaefer for better supporting the earpiece to a variety of head sizes of the wearer.

Regarding claims 8-12, Schaefer teaches a device that comprises a vocal sound receiver (6, 12, 14), a sound director having a first hollow portion (6), a second hollow portion (10, 40, 42) and a third hollow portion (8, 19 (or 18), figure 2), and an ear sound deliverer (8) having a

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head engagement member as claimed (figure 1). As broadly claimed, Schaefer shows a sound regulator (24, 26, 32, 34, 36, 38, figure 4) that is operatively coupled to the vocal sound receiver.

Schaefer does not specifically teach a head securing member removably attached to the sound deliverer as claimed. However, providing a head support for the earpiece is known in the art.

May or Golliher teaches a head support for a hand set (see figures 1-2 in May and figures 1, 4, 5 in Golliher)

Therefore, it would have been obvious to one skilled in the art to provide a head support or a head securing member, as taught by May or Golliher, for the device of Schaefer for better supporting the earpiece to a variety of head sizes of the wearer.

Regarding claims 13 and 15, Schaefer in view of May or Golliher teaches the sound director that includes a fastener (12, 20 in May and 10, 12, 14, 16, 18, 20 in Golliher) as claimed.

Regarding claim 14, it is obvious that the device of Schaefer in view of May or Golliher can be interchangeable as claimed.

### ***Response to Arguments***

5. Applicant's arguments filed 5/15/07 have been fully considered but they are not persuasive.

Responding to the arguments about the sound regulator in claims 1, 8, 26 and 31, the Applicant should note that Schaefer does teach a sound regulator (24, 26, 32, 34, 36, 38, figure 4) as claimed. As broadly claimed, the sound regulator (24, 26, 32, 34, 36, 38) is operatively coupled to the vocal sound receiver (6, figure 2).

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***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL  
May 29, 2007



HUYEN LE  
PRIMARY EXAMINER